

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**

**CENTER FOR INDIVIDUAL
FREEDOM, INC.,**

Plaintiff,

v.

Civil Action No.: 1:08-cv-00190

**NATALIE E. TENNANT and
TIMOTHY D. BOGGESE,**

Defendants,

v.

**WEST VIRGINIANS FOR LIFE,
INC., and ZANE LAWHORN,**

Plaintiffs,

v.

Civil Action No.: 1:08-cv-01133

NATALIE E. TENNANT, *et al.*

**GARY A. COLLIAS, WILLIAM N.
RENZELLI, ROBERT RUPP and
CINDY SMITH, in their official
capacities as members of the West
Virginia State Election Commission,**

Defendants.

**STATE DEFENDANTS' MOTION TO FILE NEW
EXHIBIT TO THEIR "MOTION TO DISMISS AS MOOT"**

The Secretary of State and the State Election Commission, by their counsel, hereby move to submit the attached "RESOLUTION" of the State Election Commission as Exhibit 4 to their "Motion to Dismiss as Moot", and as grounds therefore say:

1. By Orders entered May 26, 2010, and June 4, 2010, this Court established a schedule for submission and briefing of the State Defendants' Motion to Dismiss as Moot, which schedule ended on June 14, 2010.

2. At a special meeting held June 17, 2010, the State Election Commission executed the attached "RESOLUTION", wherein said Commission resolved that it "will not investigate or enforce violations of the repealed or amended laws" that changed with the enactment of House Bill 4647.

3. Said meeting was the first opportunity for the Commission to consider the Resolution following this Court's scheduling of the submission and briefing of the Motion to Dismiss as Moot.

4. Said Resolution was immediately forwarded to the undersigned counsel's office, but he did not become aware of it until Monday, June 28, 2010, due to his being absent on vacation during the interim.

5. Although all parties hereto maintain that a "promise not to enforce" is irrelevant to the outcome of the pending Motion to Dismiss as Moot¹, the State Defendants nonetheless wanted the Court to be aware of the Resolution so as to be fully informed.

6. Counsel for all Plaintiffs have indicated to the undersigned that they "do not object to the submission of the Motion, but will respond promptly as to the significance of the attached resolution."

7. A proposed order is provided herewith.

WHEREFORE, Defendants pray that this Court grant this motion.

¹See, Doc. [197](#) at 2-3, 17-20; Doc. [198](#) at 12-14, and Doc. [199](#) at 6.)

Respectfully submitted,

NATALIE E. TENNANT, SECRETARY OF STATE
OF WEST VIRGINIA and GARY A. COLLIAS,
WILLIAM N. RENZELLI, ROBERT RUPP and
CINDY SMITH, in their official capacities as
members of the West Virginia State Election
Commission

By Counsel,

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

/s/ *Silas B. Taylor*

Silas B. Taylor
Senior Deputy Attorney General
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, West Virginia 25305-0220
Telephone: (304) 558-2021
Fax: (304) 558-0140
E-mail: silastaylor@yahoo.com

*Counsel for Natalie E. Tennant, Secretary of
State of West Virginia, Gary A. Collias, William N. Renzelli,
Robert Rupp and Cindy Smith, in their official capacities
as members of the West Virginia State Election Commission*

CERTIFICATE OF SERVICE

I, Silas B. Taylor, Senior Deputy Attorney General, do hereby certify that on the 29th day of June 2010, I electronically filed the foregoing “State Defendants’ Motion to File New Exhibit” with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

William C. Porth, Esq.
Robinson, McElwee
Post Office Box 1791
Charleston, West Virginia 25326

Shirley J. Stanton, Esq.
Stanton Law Firm
Post Office Box 968
Fairmont, WV 26555

Thomas W. Kirby, Esq.
Wiley Rein, LLP
1776 K Street, NW
Washington, DC 20006

Joseph L. Jenkins, Esq.
Preservati Law Offices
Post Office Box 1431
Charleston, WV 25325

James Bopp, Jr., Esq.
Bopp, Coleson & Bostrom
One South Sixth Street
Terre Haute, IN 47807-3510

I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Robbin Stewart
Post Office Box 29164
Cumberland, IN 46229-0164

/s/ Silas B. Taylor
Silas B. Taylor
Senior Deputy Attorney General

Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, West Virginia 25305-0220
Telephone: (304) 558-2021
Fax: (304) 558-0140
E-mail: silastaylor@yahoo.com